

SCOOP THE CUB REPORTER

What Good is a 16-inch Gun if You Can't See to Shoot it?

By "Hop"



JUDGE AVERILL'S LICENSE DECISION

(Continued from page 1)

definite boundaries for the Town of Tonopah. The descriptions of these three lots of boundaries differ considerably, but practically they are all the same, for within them all, as strongly indicated by the evidence, live all or very nearly all of the people of Tonopah. But this question is not important, as the "voting population" is determined largely by the registry, which no doubt in 1904 was made well within the limits of all three lots of boundaries. The election of 1905, by virtue of the enabling act of 1903, referred back to the registry of 1904, thereby adopting it; and two days later the County Commissioners also referred back to it as a factor in determining the "voting population" of the Town of Tonopah.

I conclude from this discussion that in all likelihood the Board of County Commissioners committed no error of judgment in basing their adoption of the Town Government Act for the Town of Tonopah upon its containing a voting population of six hundred or more on July 5, 1905.

But what is the attitude of the law as bearing upon their acts in this respect, at this date, ten years later?

Its first presumption, covering the whole period of ten years, is, though the Board of County Commissioners is a governmental body of limited jurisdiction, without power to go beyond the provisions of the statutes controlling its acts, that when no other provision is made for the exercise of judgment but that of its members, and in the absence of fraud, its conclusions have a finality that courts will be loath to question. 89 Pac. 620.

The important presumption of law here applicable is, however, that after a long period during which powers of a municipal corporation have existed and exercised powers, inquiry into its original organization is not favored—that it was legally constituted. The presumption of both law and fact is that it came into existence regularly, and this presumption arises naturally out of the failure of any one to question its legal existence promptly or during the long period that has elapsed. Thus, in this instance, no one disputed the right of the Commissioners to do what they did at or soon after the ordinance in question was passed, though no doubt there were business men as unwilling to pay licenses then as there are now; and no one seems to have doubted the existence of a "voting population" of six hundred or more within the Town of Tonopah; at any rate, none of the unwilling ones. If there were any, as no doubt there were, raised the question.

It may be questioned whether the Town of Tonopah is a municipal corporation, but if not it resembles such an organization sufficiently so that the same principles as in the cases quoted from are applicable. Presumptions of this kind are rebuttable and will not stand against direct and positive evidence opposed to them, but unless so rebutted they serve as substitutes for evidence that has been lost or after a long lapse of years is difficult to obtain.

The contention was earnestly made that the regularity of the proceedings of the County Commissioners in adopting a Town Government for Tonopah must be shown by the record. It is difficult to understand what record there could be more than they made, as the act makes no provision for a census or anything else except apparently an exercise of judgment by the Commissioners based on evidence which they might have available, which evidence is now lost, such as the registers used at the election of 1904 and that of July, 1905, or is difficult to obtain. It seems that under the act no great formality is required, and we find in the record of the proceedings more than was really demanded by the act.

I have no hesitation in reaching the conclusion that the Town of Tonopah had a voting population of six hundred or more on July 5, 1905, when the County Commissioners applied to it the Town Government Act of 1881, as amended in 1887, 1889 and 1903; and I so find, the finding being supported to whatever extent necessary by the presumptions above referred to.

As a conclusion drawn from this conclusion, I find that the Board of County Commissioners, acting as a town board for Tonopah were within their rights in passing ordinances, including the ordinance under discussion, except as hereinafter explained.

The next question is that of sufficiency of publication. The law reads, "no ordinance passed by said board shall be in force or effect until published for one week." The ordinance under discussion was published once in the Tonopah Bonanza, which was then a weekly paper. There was no daily paper in the County—none in Tonopah. A well settled principle of

law and common sense is that nothing impossible is required, and, except the law itself distinctly provides for it, nothing unreasonable. If by publication is meant publication by printing in a newspaper, and there were no daily papers, how could publication for one week mean in more than one issue? Some one suggested two appearances of the notice to make good measure and round out the week, but I find no such rule applied in any case.

"The character of the newspapers in the particular locality is an element to be considered. If no daily newspaper is published, it is obvious that the requirement cannot be held to contemplate a continuous daily printing of the notice. Nor will a requirement of a certain number of days' notice be deemed to be that number of insertions in a weekly newspaper."—15 Maryland, 529.

The word "for" in such acts has been interpreted to mean "during." "During one week" surely doesn't include any part of the next week, or a "week of Saturdays," the Bonanza on those days having been printed on Saturday. So it appears that the Commissioners did all that could reasonably be expected of them to comply with the law as to publication in a newspaper.

But, as argued by counsel for the defendants, "publication" does not necessarily mean printing in a newspaper. It means as applied to laws and ordinances "to make known" to the people and especially those people interested. The ordinance was published in the Bonanza of August 12 and commented upon editorially in the same issue. It was passed August 8, 1905, and did not take effect until August 21, 1905. It requires the Sheriff to see that it is rigidly enforced, and that licenses issued by him are kept posted in a conspicuous place. There can be little doubt that every business man affected by it had knowledge of it and its provisions within a few weeks of its adoption;

and that it has had this form of "publication" ever since. The purpose of the publication was no doubt twofold, to inform, and to afford opportunity for objection to its enforcement, which latter opportunity exists now, as evidenced by the answers in this and its companion suits, and has existed for ten years. Under the circumstances as detailed, I conclude that the publication or the ordinance was sufficient.

The fourth question to be acted upon is whether the businesses of the defendants in this and related suits are subject to the payment of licenses under the provisions of the Town Government Act. This calls up for consideration as striking an example of legislative bungling as one is likely to encounter. The ninth subdivision of Section 1 of the act of 1881 reads:

"Ninth—To fix and collect a license tax on, and regulate all places of business and amusement so licensed, as follows, to-wit: Artisans, artists, assayers, auctioneers, * * * to license, tax and regulate, prohibit and suppress all tipping houses, dram shops, public card tables, raffles, hawkers, gambling houses, disorderly houses, and houses of ill fame; * * * to fix and collect a license tax upon all professions, trades or business within said town or city not heretofore specified."

It will be seen from this that every class of business was subject to a license tax.

The amendment of 1889 inserted a proviso after the words "ill fame," where the second group of stars appears in the quotation, reading, "provided, that in all unincorporated cities and towns in this state the Boards of County Commissioners shall have the power to fix and collect a tax upon the following places of business and amusements, and none others, as follows to-wit: Circus, caravan or menagerie, concerts, theatrical performances, melodowns, and other exhibitions, dance houses,

wholesale liquor merchants, brewers, manufacturers of liquors and beer, saloons, bars, bar-rooms or cellars, gambling and gambling houses, hawkers and peddlers, junk shops, pawnbrokers, auctioneers, solicitors, drummers and mercantile agents; * * *"

The remainder of the ninth subdivision of Section 1 of the act is the same as it was in 1881, as quoted above, and apparently the provision contains the last two lines, "to fix and collect a license tax upon all professions, trades or business within said town or city not heretofore specified."

In other words, on the face of it, no change whatever was made in the original act, except the emphasizing of certain forms of business as being subject to license tax.

In 1896 the Supreme Court of Nevada, in the case of the Board of County Commissioners of Washoe County etc. vs. A. W. Griswold held as follows:

"This legislation shows that by the terms 'unincorporated towns' in the amendment was meant such towns as had not been specially incorporated by separate charter. The entire act is intended to apply only to unincorporated towns, and the fact that the proviso introduced by the amendment is in terms confined to that class of towns does not make any part of the act applicable to any other class of towns. The proviso being the only change in the section as it originally stood, it is clear that this was the sole purpose of the amendment, and that by it the legislature intended to restrict the previously unlimited powers of the commissioners in the collection of licenses, to the kinds of business enumerated in the clause added to the section."

This means that no licenses could be imposed by the commissioners under the Town Government Act, as amended, except upon the businesses enumerated in the proviso. In spite of the general provision covering all classes of business which became incorporated into the proviso.

Opens Assay Office

R. B. Kidd, the pioneer assayer of Tonopah, wishes to inform his old patrons and the public, that he has opened a custom assay office at the office of the Tonopah Midway Mining company; all work will be guaranteed; and he will make controls a specialty. Phone 792.

DAILY STAGE GOLDFIELD

Leave Mizpah Hotel 3:30 P. M.
BROWN-PARKER AUTO CO.
GOLDFIELD

H. E. EPSTINE Stock Broker

ESTABLISHED 1905
Southern Nevada Securities
bought and sold on San Francisco and Philadelphia Stock Exchanges and New York Curb.
MAIN STREET

TONOPAH ASSAY OFFICE

Prompt, Careful Attention to all work. Samples from outside points assayed on day received.
Mailing Bags sent to any address on application.

J. A. McLaughlin, Assayer

The Cobweb

STATE BANK BLDG.
We handle the Best Wines, Liquors and Cigars.
7-Year Old Lacey Whisky
Returns by wire received on all important sporting events.
PAY CHECKS CASHED

The Cobweb

JOHN MANION, H. M. CLIF-FORD, Props.

Mizpah Hotel

Modern hotel where every reasonable tariff prevails.
HOT AND COLD RUNNING WATER IN EACH ROOM
Rooms with or without private baths; single or en suite.

Commercial Rates

TONOPAH LIQUOR CO.

THE HOUSE OF QUALITY
FINEST BRANDS OF Wines, Liquors, Cigars
MAIN ST. OPP. POSTOFFICE

E. W. SMITH Tonopah Studio

Portrait and Scenic Work. Anything Photographic, we can do it. Special mid-summer prices. Cutting Bldg., Main St., Tonopah, Nev.

J. C. Robertson STOCK BROKER

MINING INVESTMENTS
All Stocks Bought and Sold on San Francisco and Eastern Stock Exchanges
Member San Francisco Stock Exchange

Telephone 912-109 Main St.

TONOPAH : : : NEVADA

R. FRED BROWN STOCK BROKER

All Southern Nevada Stocks bought and sold on San Francisco, Philadelphia Exchanges and New York Curb.

111 Main Street; TONOPAH, : : : NEVADA

WHEN IN NEED OF

GOOD GROCERIES AT REASONABLE PRICES

CALL UP
T. O'Connell & Son
THE GROCERS
PHONE 2382

Tonopah & Tidewater

Railroad Company

Exposition Excursions

Goldfield to San Francisco and return \$34.00
Sale Dates: Aug. 27th, 28th, Sept. 2nd, 3rd, 4th, 10th, 11th, 17th, 18th, 20th, 24th, 25th, 27th. Limit, 15 days.

Goldfield to Los Angeles and return \$27.60
Sale Dates: Sept. 3rd, 4th, 10th, 11th, 17th, 18th, 24th, 25th. Limit, 15 days.

Goldfield to S. F. and Return.....\$40.75
Goldfield to San Diego and return \$37.00
On Sale Daily. Return Limit 90 Days

Through Pullman Sleeper—Seatty to Los Angeles, San Diego and San Francisco

Fast Freight Line. Daily Refrigerator Los Angeles to Goldfield and Tonopah

Secure Tickets and Route Freight via Santa Fe in care of Tonopah & Tidewater Railroads

H. R. Grier, Gen. Agt., Tonopah, Nev.

15-day limit—Sales dates, Sept. 10, 11, 17, 18, 19, 24, 25, 27.

For further particulars "Ask the T. & G. Ticket Agent."

TONOPAH & GOLDFIELD RAILROAD COMPANY

LOTHROP-DAVIS CO.

OUR TASTE GOODS A SPECIALTY

LOTHROP-DAVIS CO.

Most men like Fatimas—but maybe you won't

Fatimas please so many men that they outsell any other cigarette costing over 5c.

But it may happen that your taste won't fit Fatimas. That's nothing against you. Nor against Fatimas.

But if your taste does fit Fatimas, you can feel

doubly grateful. For of this you can be sure—Fatimas are cool and friendly to the throat and tongue. And they will never leave you "feeling mean" as long as you smoke within the bounds of reason. These tests show you how to prove this.

Because Fatimas are cool and because they can be smoked freely and often—they have rightly earned the title, "The Sensible Cigarette."

It simply remains for you to see if their taste suits you as well as it is suiting thousands and thousands of other men. Test Fatimas today.

You may find that their taste is exactly what you've been looking for in a cigarette.

Light a cigarette today

FATIMA was the Only Cigarette Awarded the Grand Prize at the Panama Pacific International Exposition.

TWO TESTS FOR ANY CIGARETTE

The taste of the cigarette—according to a leading tobacco journal—is up to the point that you are going to smoke the cigarette. Here are the average results of tests made more widely between different kinds of cigarettes.

The first test is for coolness, which means more comfort to the throat and tongue. Light any cigarette. Draw in a steady smoke. Hold it in your mouth for a few seconds. Hold it "around" against your tongue. Now blow out the smoke. If the cigarette contains a high grade of mild tobacco leaves, combined in just the right proportion, it will always feel cool and smooth both to your throat and to your tongue.

On the other hand, if the proportions are not right and if the cigarette contains a leading grade of tobacco or hidden strands of rank, oily leaf, you will feel a nippling sting at the tip of your tongue or that "sandpaper" tickle in your throat. Test number two—How do you feel after smoking all day?

If the tobacco in the cigarette includes a correct proportion of mild grades—and is properly matured by age—and if they have qualities and to neutralize any unpleasant qualities in each of the different types of tobacco, you will be able to smoke practically whenever you feel like it through the day without feeling any effect from it.

But with another cigarette in which the blend is less skillful, even though the tobacco is of the highest grade, you will find along towards the end of the day that you are likely to have that feeling of having "smoked too much."

Clip out these tests and try them on Fatima

FATIMA
THE TURKISH BLEND
1 Cigarette
Distinctively Individual
20 FATIMAS 15c

